



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

York River off the Naval Weapons Station Yorktown-Cheatham Annex, Virginia; danger zone.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing a danger zone in the waters of the York River off Cheatham Annex in York County, Virginia. The danger zone is necessary to protect the public from hazards associated with the small arms fire operations.

DATES: *Effective:* [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FEDERAL REGISTER]

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Mr. Robert Berg, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7793.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending the regulations in 33 CFR Part 334 by establishing a new permanent danger

zone, in the waters of the York River off Cheatham Annex in York County, Virginia.

The modification to the regulations is described below.

The proposed rule was published in the September 18, 2013 issue of the Federal Register (76 FR 62692), and its regulations.gov docket number is COE-2013-0012.

There were nineteen comments received in response to the proposed rule from the public as well as state and federal agencies. Many of the comments received from the public concerned the proposed danger zone restricting public and commercial use of this portion of the York River, negative impacts to commercial and recreational fishing and oyster harvesting, concerns about the Navy shooting bullets over and into the river, negative impacts to persons using Queens Creek, visibility of the red flags and lights indicating the shooting range is active, the potential for the Navy to construct an indoor shooting range as an alternative to the existing shooting range, and some questioned why the danger zone was necessary now since there have been no safety issues to date. Two comments received were in support of the proposed danger zone. The comments are addressed below.

The Navy has been conducting live fire training at the shooting range on Cheatham Annex adjacent to the York River for decades. The Navy does not shoot out into the York River. The shooting range is separated from the York River by a berm which prevents rounds from escaping the range and going into the York River. Only experienced marksmen use this range and only small caliber rounds are allowed on this range; no large caliber or machine guns are permitted. The area has been marked on navigation charts as a danger zone for years. The danger zone will better protect the public from any potential errant rounds that might escape the berm separating the range

from the York River. The danger zone does not ban persons from transiting the area, and the Navy monitors the danger zone using spotters and/or cameras and will cease firing when vessels or persons enter the danger zone. The Navy stated that the Department of Defense policy for the protection of a surface danger zone is more conservative than private sector shooting ranges. The Navy also stated that it has a perfect safety record with respect to public safety at this range.

There were numerous comments related to commercial and recreational fishing uses of this portion of the York River as well as oyster harvesting in the danger zone. The Navy has been operating the range such that once persons or vessels enter the danger zone they cease firing until the danger zone is clear. This operation has been in place for years and the Navy will continue to operate the range in this same manner. There should be no impact to public use of this portion of the York River as a result of this amendment to the regulations.

Numerous comments were received regarding issues with visibility of the flags and lights used to indicate the range is in use. Red flags are used during the daytime to alert the public to live fire activities while red lights are used at night. The Navy has indicated that they will install larger lights in order to address the visibility issue at night. In addition, the Navy will install a new flagpole which is higher and install a larger sized flag to increase its visibility during daylight hours.

Numerous comments were received from users of Queens Creek, located just upstream of the danger zone. They were concerned this amendment to the regulations would impact their ability to access the York River. As addressed above, the danger zone will not affect persons utilizing the York River from Queens Creek.

Multiple comments were made regarding an indoor shooting range as an alternative to the existing outdoor range and the danger zone. The Navy has indicated that an indoor range would take approximately 5 years to construct and become operational. The existing range has been in use for decades and with little negative impact on the public use of the York River and its operation has resulted in no public safety issues. Due to the time frame required to construct another facility the Corps believes the existing facility with the danger zone is the most practicable as it allows the Navy to continue their required training while ensuring public safety.

Numerous persons questioned why the Navy was doing this now since the range has been in use for so long. Modifying the regulation will better protect citizens from potential hazards associated with the operation of the small arms training range on Cheatham Annex.

The United States Coast Guard submitted recommended changes to the proposed regulation that would make its intent clearer. The Coast Guard recommended using a separate paragraph for the sentence stating that the Navy will not use the range when visibility is less than the maximum range of the weapons being used. They also recommended adding at the end of this sentence “or while a vessel is within the danger zone” to address the expected cease fire when vessels transit through the danger zone. We concur with these changes and as a result we modified the regulation.

Procedural Requirements

a. Review under Executive Order 12866. This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act. This final rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that this regulation would have practically no economic impact on the public nor would it result in any anticipated navigational hazard or interference with existing waterway traffic. This regulation will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act. This final rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared and it may be reviewed at the district office listed at the end of FOR FURTHER INFORMATION, CONTACT above.

d. Unfunded Mandates Act. This final rule does not impose an enforceable duty on the private sector and, therefore, it is not a Federal private sector mandate and is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Reform Act. (Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*) We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.285 to read as follows:

§ 334.285 York River and the Naval Weapons Station Yorktown-Cheatham Annex, Yorktown, Virginia.; danger zone.

(a) *The area.* The waters within an area beginning at mean high water on the shore at the facility located at latitude 37°17'33.10"N, longitude 76°36' 19.06"W; then northeast to a point in the York River at latitude 37°18'36.65"N, longitude 76°34'39.01"W; thence south, southeast to latitude 37°17'59.37"N, longitude 76°34' 13.65"W; then southwest to a point on the shore located at latitude 37°17'26.75"N, longitude 76°36'14.89"W.

(b) *The regulations.* (1) Vessels and persons may transit this area at any time. No vessel or persons shall anchor, fish or conduct any waterborne activities within the danger zone established in accordance with this regulation any time live firing exercises are being conducted.

(2) Anytime live firing is being conducted, the person or persons in charge shall display a red flag from a conspicuous location along the shore to signify the range is active and post lookouts to ensure the safety of all vessels passing through the area. At night, red lights will be displayed in lieu of flags.

(3) No firing activities shall be conducted when the visibility is less than the maximum range of the weapons being used at the facility or while a vessel is within the danger zone.

(4) Recreational and commercial activities may be conducted in this area anytime the range is inactive.

(c) Enforcement. The regulations in this section shall be enforced by the Commander, Naval Weapons Station, Yorktown, or such agencies as he or she may designate.

Dated: June 13, 2014

Approved:

James R. Hannon

Chief, Operations and Regulatory

Directorate of Civil Works

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